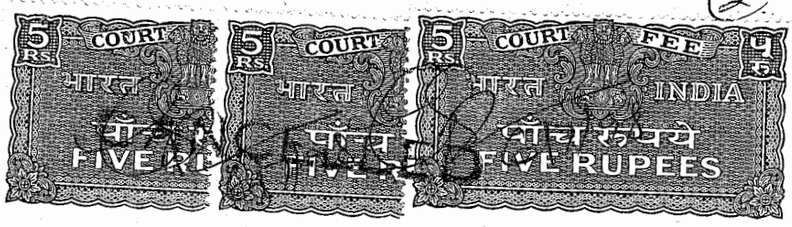

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CF152

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Cr.A. No 1447 Of 98

Appellant (B): Gaya Prasad Singh, Son of Shivsampat Singh Thakur, aged 42 years, Constable No. 348, P.S. Nevara, Raipur.

Versus

Respondent : State of M.P., through Special Police Establishment, Lokayut Office, Bhopal, Office at Raipur.

CRIMINAL APPEAL UNDER SECTION 374(2) OF CR.P.C. AGAINST THE JUDGMENT AND SENTENCE DATED 30-6-98 PASSED BY SHRI H.P. SINGH SPECIAL JUDGE, RAIPUR IN SPECIAL CASE NO. 5/94

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No. 1447/1998

Gaya Prasad Singh

-Versus-

State of Chhattisgarh

J U D G M E N T

Post for : 21.11.2005 at 3 P.M.

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.1447/1998

Gaya Prasad Singh

-Versus-

State of Chhattisgarh

Present:-
Appellant by Smt. Meera Ansari & Shri N.P. Kela assisted with Shri K.A. Ansari, Senior Advocate.

State by Shri U.N.S.Deo, Govt. Advocate/Additional Public Prosecutor.

JUDGMENT
(Delivered on 21/11/2005)

The following judgment of the Court was delivered by *Dilip Raosaheb Deshmukh, J.*

1. This appeal is directed against the judgment dated 30.6.98 delivered in special Case No. 5/94 by Shri H.P. Singh, Special Judge, Raipur whereby the appellant Gaya Prasad Singh was convicted U/S 7 and Section 13 (1) (D) read with Section 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act of 1988) and was sentenced to undergo rigorous imprisonment for one year and a fine of Rs. 1,000/- under Section 7 of the Act of 1988 and in default of payment of fine to undergo simple imprisonment for three months and also to rigorous imprisonment for one year and a fine of Rs.1,000/- under Section 13 (1) (D) read with Section 13 (2) of the Act of 1988 and in default, to undergo simple imprisonment for 3 months.

2. The appellant was prosecuted with co-accused T.S. Chouhan, the then Station House Officer of P.S. Nevra who was acquitted by the Special Judge from the

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charge under Section 7 and 13 (1) (D) read with Section 13 (2) of the Act of 1988.

3. Briefly stated the prosecution story is that Shiv Kumar Agarwal P.W. 11 deals with scrap material at Nevra. On 28.1.89, the appellant constable Gaya Prasad Singh took Shiv Kumar P.W.11 to the rest house where they met the Station House Officer, T.S. Chouhan. The appellant and T.S. Chouhan told Shiv Kumar that a case for unlawful possession of railway property exists against him and therefore, if he wants to peacefully run his illegal scrap business, he should pay Rs. 3,000/- per month to them failing which a case will be registered against him. T.S. Chouhan asked Shiv Kumar to give Rs. 1,500/- to Gaya Prasad Singh by evening on the same day. Shiv Kumar somehow managed to pay Rs. 1,380/- to the appellant Gaya Prasad Singh at his residence and prayed for time for the remaining amount. On 13.2.89, the appellant Gaya Prasad Singh took Shiv Kumar from his shop to the rest house where T.S. Chouhan was waiting for them. T.S. Chouhan directed Shiv Kumar that he should deliver Rs. 1,620/- at the house of the appellant Gaya Prasad Singh before 14.2.89. On this, Shiv Kumar lodged a written complaint to the S.P. Lokayukt, Raipur. A trap was organized headed by Inspector C.K. Tiwari P.W. 13, M.K. Das Gupta, Asstt. Fisheries Officer, B.C. Sharma, P.W. 3, Asstt. Director who were summoned as witnesses. Shiv Kumar P.W. 11 presented Rs. 1,620/- in notes of different denominations. After applying Phenolphthalein powder to the notes, they were kept in the pocket of Shiv Kumar. He went near P.S. Nevra. The appellant Gaya Prasad Singh came to the Police Station, met Shiv Kumar and expressed annoyance on the delay. B.C. Sharma P.W. 3 was standing with Shiv Kumar. The appellant Gaya Prasad Singh asked Shiv Kumar to come

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to his quarter. Shiv Kumar asked B.C. Sharma to accompany him. The appellant did not agree, took Shiv Kumar alone with him inside his quarter and locked the door and demanded Rs. 1,620/- . Shiv Kumar handed over the money. The appellant counted the notes and kept it in the pocket of his Bushshirt and was about to accompany Shiv Kumar towards the Police Station. At this time, upon a predetermined signal given by Shiv Kumar the trap party arrived at the spot. Inspector Rajeshwar Singh P.W. 12 identified himself to the appellant who tried to run away. Rajeshwar Singh caught the appellant. There was a scuffle. The notes fell down from the pocket of the appellant on the ground. In the presence of Shri M.K. Das Gupta and Shri B.C. Sharma P.W. 3, Inspector C.K. Tiwari P.W. 13, prepared the Panchnama and seized the notes amounting to Rs. 1,620/- which had fallen on the ground. Fingers of Gaya Prasad Singh and his shirt pocket were dipped in the plain solution of Sodium Carbonate which changed into pink colour. It was sealed and seized. The notes seized from the ground were also dipped in the plain solution of Sodium Carbonate which became pink. After completion of investigation, the appellant along with T.S. Chouhan was prosecuted for offences under Section 7 and 13 (1) (D) read with Section 13 (2) of the Act of 1988.

4. The appellant abjured the guilt and pleaded innocence. He denied having made any demand of bribe to Shiv Kumar or to have ever harassed him. In his defence, he stated that Shiv Kumar deliberately attempted to put the money in his pocket which was desisted by him. In this process, the contents of his pocket fell down. He was thus falsely implicated. No evidence in defence was adduced.

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5. Learned Senior counsel for the appellant Shri K.A. Ansari has assailed the conviction of the appellant Gaya Prasad Singh on the ground that there was no legal and reliable evidence of record to substantiate the conviction of the appellant for the above mentioned offences. He led emphasis on the testimony of Shiv Kumar in para 7 wherein he had stated that he took out the money from his pocket and pushed it in the front pocket of Gaya Prasad Singh saying that henceforth he should not be harassed. Upon this, Gaya Prasad Singh repeatedly stated "What is this? I do not accept money" but immediately after this he left the place and scratched his head signaling the trap party. This incident occurred at the quarter of the appellant Gaya Prasad Singh. Learned senior counsel then pointed out to the testimony of B.C. Sharma P.W. 3 wherein it was stated that on hearing noise from inside the Police Station he found that a scuffle was going on between Shiv Kumar, the appellant Gaya Prasad Singh and the trap party after which the hands of the appellant Gaya Prasad were washed in the solution of Sodium Carbonate and the trap party seized the currency notes which had fallen on the ground. It was contended that the evidence was totally contradictory so far as the place of occurrence was concerned. It was also pointed out that the testimony of Shiv Kumar P.W.11 in para 7 clearly proved the innocence of the appellant Gaya Prasad Singh. There was absolutely no evidence about demand for any bribe or to show that Shiv Kumar had paid Rs. 1,380/- to Gaya Prasad on an earlier occasion. Panchnama Ex.P-4 also revealed that the notes which had fallen to the ground had been seized. So far as the evidence relating to the change of colour of the Sodium Carbonate solution upon washing of the fingers of the appellant is concerned, it was argued that as a natural conduct, the appellant Gaya Prasad Singh had

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immediately thrown the notes which had been thrust by Shiv Kumar in his pocket and in that process, the fingers of the appellant had contacted the Phenolphthalein powder as a result of which the colour of the Sodium Carbonate solution changed to pink. Reliance was placed on *Smt Meena Vs. State of Maharashtra* reported in **2000 Vol. 5 SCC 21** wherein it was held that mere recovery of currency note of Rs. 20/- denomination and that too lying on the pad on the table by itself could not be held to be proper or sufficient proof of the acceptance of bribe in the peculiar circumstances of the case which also lent credence to the case of the appellant that it fell on the table in the pressure of the appellant pushing it away with his hands when the currency note was attempted to be thrust into his hands. The results of Phenolphthalein test viewed in the context that the appellant could have also come into contact with the currency notes when he pushed it away with his hands cannot thus be considered to be of any reliance to prove that the appellant had really accepted the bribe amount. It was also held that the circumstances revealed that there was an attempt to weave a web around the appellant to somehow get him into trouble and victimize him. The Apex Court in the above mentioned case allowed the appeal setting aside the conviction and sentence of the appellant. On the other hand, Shri U.N.S. Deo, learned State counsel has argued in support of the impugned judgment and contended that the testimony of Inspector Rajeshwar Singh P.W. 12 clearly shows that the appellant had attempted to run away on arrival of the trap party which was followed by a scuffle during which the currency notes fell down from the pocket of the appellant. This showed the conduct of the appellant in accepting the bribe who did not voluntarily threw the currency notes alleged to have been thrust in his pocket by Shiv Kumar P.W. 11.

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He argued that despite the testimony of Shiv Kumar P.W. 11 in para 7, the very fact that the Phenolphthalein test of the appellant was positive, the trial Judge had rightly convicted the appellant.

6. have heard rival contentions and have also minutely perused the record of Special Criminal Case No.05/1994. The testimony of Inspector Rajeshwar Singh PW-12, C.K.Tiwari PW-13 and Shiv Kumar Agrawal, PW-11 proves beyond doubt that a trap was organized during which currency notes of Rs.1,620/- were supplied by the complainant Shiv Kumar Agrawal. After applying Phenolphthalein powder to the notes and after completing the necessary legal formalities the notes were kept in the pocket of Shiv Kumar Agrwal and he was asked to give a signal after the notes were accepted by the appellant. This part of the testimony has also not been questioned during the course of arguments by the learned counsel for the appellant.

7. In the entire evidence led by the prosecution there is not even an iota of material to show that the appellant Gaya Prasad Singh along with co-accused T.S.Chouhan demanded an amount of Rs.3,000/-per month from Shiv Kumar Agrawal PW-11 as protection money for not proceeding against him as per Law for his illegal activities. Relating to sale of Railway iron scrap material Shiv Kumar Agrawal PW-11 at whose instance the trap was organized, has not said a word about this. All that he testified is that Constable Gaya Prasad Singh used to regularly harass him and at the advice of some people he had gone to the special Police establishment. A look at the antecedents of Shiv Kumar Agrawal PW-11 reveals that in paragraph-20 of his statement he has admitted that several cases relating to theft of iron scrap were initiated against him

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and even on the date of his evidence there was a case relating to theft of iron scrap in one of the Courts against him. This shows that the police was upright in investigating and prosecuting Shiv Kumar P.w. 11 for his illegal activities of theft of iron scrap. Bearing this background of Shiv Kumar Agrawal PW-11 in mind, it is absolutely necessary that his testimony is scrutinized with great care and caution, lest an upright police constable may not fall prey to the evil designs of such persons. This witness was thoroughly cross-examined by Special Public Prosecutor yet nothing could be elicited from him which would go to show that at any point of time, the appellant Constable Gaya Prasad Singh had demanded a bribe of Rs. 3,000/- per month from him. There is also nothing in his evidence to show that he had paid Rs.1,380/- to Constable Gaya Prasad Singh before the trap was organized and the remaining amount of Rs.1,620/- was agreed to be paid at the residence of Constable Gaya Prasad Singh.

8. Besides, Shiv Kumar Agawal PW-11 none of the prosecution witnesses have disclosed as to what happened when Shiv Kumar Agrawal actually handed over the amount of Rs. 1,620/- to the appellant. In paragraph-11 Shiv Kumar Agrawal has clearly stated that since the appellant had never demanded any bribe, there was no question of giving any bribe to the appellant. He has stated that he only wanted that the appellant and T.S.Chouhan should not harass him. In paragraph-7 of his testimony he has stated that he met the appellant Constable Gaya Prasad Singh at his quarter whereas witnesses Ramji Bhoi PW-9, Rajeshwar Singh PW-12 and C.K.Tiwari PW-13 have deposed that Shiv Kumar Agrawal PW-11 had spoken to Constable Gaya Prasad Singh near the Police Station and thereafter both went together to the house of Gaya Prasad

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Singh. Shiv Kumar Agrawal PW-11 in para-7 of his testimony has stated that he took out the money from his pocket and thrust it in the front pocket of Constable Gaya Prasad Singh and said that henceforth he should not be harassed. Upon this Constable Gaya Prasad said "what is this", "what is this" and also said that he will not accept the money. While Constable Gaya Prasad Singh was repeatedly saying that he does not accept the money, he came out and scratched his head whereupon the trap party reached and at that point of time he found that the money thrust by him in the front pocket of Constable Gaya Prasad Singh was lying on the ground. This raises a reasonable doubt that upon the money being thrust in his pocket by Shiv Kumar Agrawal PW-11, the appellant as a natural conduct took the money out and threw it on the ground.

9. Inspector Rajeshwar Singh PW-12 has a different story to narrate. He does not state that upon receiving signal from Shiv Kumar Agrawal PW-11 he went to the spot. According to him, he went to the house of Gaya Prasad PW-12 on a Cycle and caught him whereafter there was a scuffle and both fell on the ground during which the currency notes which were sent with Shiv Kumar Agrawal PW-11 fell on the ground. It is pertinent to note that Constable Ramji Bhoi PW-9 also does not state anything about any scuffle between Rajeshwar Singh PW-12 and the appellant. In para-10 of his testimony he has also stated that when he entered the house of the appellant he found that the notes were lying on the ground. Another witness constable Pothi Ram PW-4 also did not say anything about any scuffle between Inspector Rajeshwar Singh and the appellant. He only testified that when Rajeshwar Singh caught hold of the appellant in front of his house, the notes were lying on the ground. B.C.Sharma PW-3 has also given an

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absolutely different version regarding the incident. According to him, the entire incident took place inside the Police Station where scuffle was going on between the complainant Shiv Kumar Agrawal PW-11, the appellant Constable Gaya Prasad Singh and the Vigilance Cell people who had picked up the currency notes from the ground and prepared seizure memo.

10. The testimony of Shiv Kumar Agrawal PW-11 clearly shows that no demand of bribe was made by the appellant. It also shows that he only wanted that the appellant should not harass him. May be that he had an evil design of getting constable Gaya Prasad trapped. The testimony of Shiv Kumar Agrawal PW-11 does not show that he had accompanied Constable Gaya Prasad Singh from the Police Station to his residence. It reveals that when he thrust the amount of Rs.1,620/- in the pocket of the appellant, the appellant protested by saying " what is this", " what is this", "I do not accept the money" and while the appellant was repeatedly saying this, he went out and signaled the trap party. The evidence led by the prosecution clearly shows that the currency notes amounting to Rs.1,620/- were lying on the ground.

11. The only question which now requires consideration is whether it is plausible that the fingers of the appellant came in contact with Phenolphthalein powder applied to the currency notes when he threw it on the ground. In view of the antecedents of Shiv Kumar Agrawal PW-11 and the fact that there is not even an iota of evidence on record to show that the appellant had ever demanded any bribe from Shiv Kumar P.W. 11 this possibility cannot be ruled out. Besides this, bearing the natural conduct of a person demanding bribe and taking Shiv

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Kumar P.W. 11 to his house for this, it would be highly improbable that the money would be required to be thrust in his pocket. If the demand was there, the money would have been accepted by hand directly.

12. The following points thus emerge from the aforesaid discussion:-

(A) There is absolutely no evidence to show that the appellant demanded a sum of Rs. 3,000/- per month from Shiv Kumar Agrawal PW-11 for protecting him against his illegal activities of sale of railway scrap.

(B) There is not even an iota of evidence to show that the complainant Shiv Kumar Agrawal PW-11 had paid Rs. 1,680/- to the appellant Constable Gaya Prasad Singh before the trap was organized.

(C) Complainant Shiv Kumar Agrawal PW-11 was involved in several cases of theft of iron scrap.

(D) The testimony of B.C.Sharma PW-3 showed that the incident took place inside the police station and completely contradicted the testimony of Inspector Rajeshwar Singh PW-12 and C.K. Tiwari PW-13.

(E) The defence that upon the currency notes being thrust in his pocket by Shiv Kumar P.W. 11, the appellant protested and threw the money on the ground, is plausible.

13. In the light of aforesaid discussion, I am of the considered opinion that the evidence led by the prosecution does not establish beyond doubt that there was a demand of bribe by the appellant. It is also not proved that Shiv Kumar P.W. 11 had paid Rs. 1,380/- to the appellant before the trap was organized. It is also not established beyond doubt that the appellant had accepted an amount of Rs. 1,620/- as bribe from Shiv Kumar Agrawal PW-11 on 28-01-1989. The

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antecedents of Shiv Kumar Agrawal PW-11 in para-20 of his testimony and his testimony in para 7 create a reasonable doubt that the appellant had not accepted the bribe of Rs.1,620/- from Shiv Kumar Agrawal PW-11 and upon the money being thrust in his pocket despite protests, he threw it on the ground due to which Phenolphthalein test was positive. Therefore, conviction of the appellant under Section- 7 and Section-13 (1) (D) read with Section 13 (2) of the Act of 1988 cannot be sustained.

14. In the result, the appeal is allowed. The conviction of the appellant under Section- 7 and Section 13 (1) (D) read with Section 13 (2) of the Prevention of Corruption Act, 1988 is set aside. The appellant Constable Gaya Prasad Singh is acquitted of the charge under Section-7 and Section 13 (1) (D) read with Section 13 (2) of the Prevention of Corruption Act, 1988. Fine, if paid, shall be refunded to the appellant.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya/Satish